

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

DONELL HATCHER,

Defendant.

No. Cr. 92-001 WBS
No. Cr. 09-0625 WBS

ORDER

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The court has received from defendant's court appointed attorney, Erik Babcock, an Ex Parte Application to Extend Time to File Briefs, requesting a two week extension of time to June 11, 2014, to file defendant's briefs which the court previously ordered to be filed on or before May 28, 2014.

The court appointed Mr. Babcock because it had become impossible to deal with the numerous, often repetitive, sometimes internally inconsistent, and difficult to comprehend motions, requests, and other papers defendant was trying to file pro se. It was the court's intent to have all of the filings on behalf of

1 defendant filtered through counsel, so that they could be
2 efficiently managed and timely ruled upon by the court.

3 The last hearing had to be scheduled because
4 notwithstanding the appointment of counsel, defendant continued
5 to file confusing papers pro se. The hearing was originally set
6 on a date which Mr. Babcock said was convenient to him, but had
7 to be rescheduled at the last minute because Mr. Babcock was
8 involved in a hearing before another judge who would not recess
9 it to allow Mr. Babcock to appear in this court. At the
10 rescheduled hearing, which was eventually held April 30, 2014,
11 the court set a schedule *as suggested by Mr. Babcock* for briefing
12 the various issues.

13 First, were defendant's motions for attorney's fees
14 with regard to the forfeiture proceeding. The government
15 represented that it had filed its responses to the motions, and
16 Mr. Babcock indicated that he would be "happy to file a brief
17 reply" which he represented "wouldn't be more than a couple of
18 pages." When the court asked him to suggest a date by which to
19 file his reply, Mr. Babcock replied, "Two weeks, the 14th." The
20 court agreed, but Mr. Babcock never filed that reply.

21 Second, the court invited counsel to suggest a date for
22 filing briefs in support of defendant's four pending habeas
23 corpus and 2255 petitions. It was Mr. Babcock who replied, "I
24 would ask for four weeks on that, your Honor, which would be May
25 28th, if that works?" The court agreed. In setting the dates
26 suggested by Mr. Babcock, the court reasonably assumed he had
27 finally sufficiently cleared his calendar to be able to file his
28 papers on those dates. Now, the court is told that he is not


1 prepared to file his brief because he has "several other time-
2 limited commitments" which have limited his ability to work on
3 this case. The chief commitment referred to appears to be an
4 opening brief due in the Ninth Circuit, which Mr. Babcock should
5 have anticipated and taken into account when he agreed to the
6 briefing schedule in this case.

7 At the April 30, 2014 hearing, defendant vented his
8 frustration that Mr. Babcock up to that point was "missing in
9 action." But he appeared to be satisfied because Mr. Babcock
10 "finally has time and we're on the same page." The court is
11 quite frankly concerned that unless Mr. Babcock is prepared to
12 spend more time on what he has agreed to do in this case, we will
13 be right back where we were before he was appointed, only several
14 months later. The court will grant this one request, but if Mr.
15 Babcock does not have the time to devote to this assignment he
16 should promptly so inform the court so that another attorney who
17 does have the time and ability to undertake this assignment can
18 be appointed.

19 IT IS THEREFORE ORDERED that defense counsel's request
20 for an extension of time to and including June 11, 2014, to file
21 defendant's brief in support of his habeas corpus and § 2255
22 petitions be, and the same is hereby, GRANTED.

23 IT IS FURTHER ORDERED that defense counsel shall file
24 defendant's reply to the government's response to his motion for
25 attorney's fees within one week from the date of this order.

26 Dated: May 29, 2014

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28 **WILLIAM B. SHUBB**
UNITED STATES DISTRICT JUDGE